
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

DALE E. WHIPPLE,

Plaintiff,

vs.

STATE OF UTAH, et al.,

Defendants.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Case No. 2:10CV811DAK

Judge Dale A. Kimball

This case was assigned to United States District Court Judge Dale A. Kimball, who then referred it to United States Magistrate Judge Samuel Alba under 28 U.S.C. § 636(b)(1)(B). Magistrate Judge Alba issued a Report and Recommendation on August 25, 2011, concluding that (1) Defendants Utah.com and Ryan Kirby (“Utah.com Defendants”) motion to dismiss should be granted; (2) Defendants Utah Office of Tourism and Leigh van der Esch and the State of Utah’s (“Utah Tourism Defendants”) motion to dismiss should be granted; and (3) Defendants Millard County, Millard County Tourism Committee, Reichard Waddingham, LeRay Jackson, Daron Smith, Kathy Walker, John Cooper, Craig Greathouse, Debra Haverson, Dick Flones, Roger Killpack, Evelyn Warnick, Don Fullmer, Gayle Cluff, Tonya Quackenbush, and Linda Gillmore’s (“Millard County Defendants”) motion to dismiss and/or for summary judgment should be granted.

The Report and Recommendation notified the parties that any objection to the Report and

Recommendation was required to be filed within ten days of receiving it. Plaintiff timely filed his objections, entitled “Memorandum in Rply to Judge Alba’s Report & Recommendations,” on September 8, 2011.

The court has carefully reviewed the record in this case *de novo*. Specifically, the court has reviewed the pleadings in this case, the materials submitted by the parties in connection with the three motions to dismiss, the transcript of the hearing on those motions, Magistrate Judge Alba’s August 25, 2011 Report and Recommendation, and Plaintiff’s objections to the Report and Recommendation.

Plaintiff asserts numerous objections to the Report and Recommendation. The court has reviewed each of these objections and carefully considered whether any of the objections impact the analysis contained in the August 25, 2011 Report and Recommendation. Rather than address each objection individually, the court concludes it is most efficient to address them generally.

Many of the objections pertain to information or matters that are not relevant to the issues presented in the pending motions. Plaintiff takes issue with the treatment he believes he received from Magistrate Judge Alba. However, the court notes that Magistrate Judge Alba’s Report and Recommendation fully addresses Plaintiff’s arguments and thoroughly analyzes the relevant issues. Such treatment demonstrates respect for the litigants in this case. Moreover, Plaintiff’s objections to Magistrate Judge Alba’s tone at the hearing is not supported by the transcript of the hearing. Magistrate Judge Alba generously granted oral argument and conducted the hearing professionally. Parties appearing before the court should expect to be questioned about their case and be prepared to present their case efficiently. The transcript of the hearing does not demonstrate a bias against Plaintiff.

With respect to the issues raised in the motions, the court finds that none of Plaintiff's objections impact Magistrate Judge Alba's conclusions of law. Plaintiff claims that Magistrate Judge Alba used Defendants' version of the facts. However, Magistrate Judge Alba repeatedly referred to the allegations in Plaintiff's Complaint, exhibits to the Complaint, and other documentary evidence. Even on a motion to dismiss, the court cannot accept as true conclusory or speculative allegations. Magistrate Judge Alba has not improperly weighed the evidence. And, specifically, Plaintiff's contention that no first sale occurred is squarely belied by the documentary evidence before the court.

Plaintiff's objections to Report and Recommendation demonstrate a misunderstanding of the applicable law. Plaintiff's examples of the fair use doctrine are not on point and his contentions with respect to governmental immunity are gross overstatements. No reasonable reader of Magistrate Judge Alba's Report and Recommendation could contend, as suggested by Plaintiff, that Magistrate Judge Alba "offers immunity to all government workers for all things." Plaintiff's sweeping arguments in this vein do nothing to support his position or to demonstrate any actual errors in the Report and Recommendation. Magistrate Judge Alba looked at the specific law relevant to the motions in question and applied them to the specific evidence in this case. Plaintiff's attempts to extend specific rulings to absurd results are not persuasive.

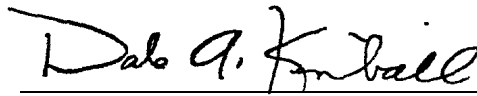
The Report and Recommendation outlines all of the possible bases for dismissal of Plaintiffs' claims. Many of his claims fail for multiple reasons. Plaintiff has not submitted any objections that demonstrate that any of these bases for dismissal were erroneously applied.

The court fully agrees with the extensive and thorough analysis contained in Magistrate Judge Alba's Report and Recommendation. Therefore, the court approves and adopts the

Magistrate Judge's August 25, 2011 Report and Recommendation in its entirety. Accordingly, (1) the Utah.com Defendants' motion to dismiss is GRANTED; (2) the Utah Tourism Defendants' motion to dismiss is GRANTED; and (3) the Millard County Defendants' motion to dismiss and/or for summary judgment is GRANTED. The Clerk of Court is directed to close this case, with each party to bear its and his or her own fees and costs related to this litigation.

DATED this 19th day of September, 2011.

BY THE COURT:

A handwritten signature in black ink, reading "Dale A. Kimball", is written over a horizontal line.

DALE A. KIMBALL
United States District Judge